

REMARKS

Claims 1-48 are pending in the application.

Claims 1-28 and 30-49 stand rejected.

Claim 29 stands objected to.

Claims 1, 4, 6-10, 20, 22, 24, 30-31, 36-40, 43 and 46 have been amended.

Claims 2-3, 5, 12-13, 21, 23, 32-33, 34 and 42 have been cancelled.

*Rejection of Claims under 35 U.S.C. §101*

Claims 1-49 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicants have amended independent claims 1, 10, 20, 30 and 40, among others of the claims, in part to address this rejection, and so respectfully submit that this rejection is overcome thereby. Applicants respectfully submit, however, that these claims do not suffer from the infirmities posited in the Office Action, nor did these claims so suffer in their original state.

Applicants respectfully submit that claims 1-9 do not suffer from the infirmities posited in the Office Action, nor did these claims so suffer in their original state. For example, these claims recite a tunnel classification stage that comprises, among other elements, a security group identifier identification unit and a tunnel classification unit. These claims also variously recite that the claimed tunnel classification stage is part of a router, which further comprises a lookup unit, which in turn comprises a content-addressable memory. These elements contemplate the use of at least some hardware, and so cannot simply be said to be solely software (though this

statement should not be interpreted as precluding at least some of these features being implemented in software).

As to the statement in the Office Action that the elements of these claims produce no useful output, Applicants respectfully disagree, both as to the need for and the fact thereof. First, being apparatus claims, claims 1-9 need not be recited such that a result is claimed. Second, when the claimed elements are configured as claimed, these elements do produce a tangible, useful result (a determination of the tunnel via which a packet should be forwarded). However, to further clarify and distinguish the claimed invention from the cited references, Applicants have amended certain of the limitations of claims 2 and 3 into claim 1. Applicants therefore respectfully submit that this rejection is overcome thereby, for at least the foregoing reasons.

Applicants also respectfully submit that claims 10-19 do not suffer from the infirmities posited in the Office Action (e.g., that the claimed invention provides "... no tangible and usable outcome ..."), nor did these claims so suffer in their original state. For example, claim 10 continues to recite the classification of a packet based on a security group identifier. Classifying a packet is, in and of itself, a useful result, as such an operation allows one to then perform actions using this information. Applicants therefore respectfully submit that claims 20-29 are directed to statutory subject matter. However, to further clarify and distinguish the claimed invention from the cited references, Applicants have amended certain of the limitations of claims 12 and 13 into claim 10. Applicants therefore respectfully submit that this rejection is overcome thereby, for at least the foregoing reasons.

Applicants agree with the Office Action, in that the pending claims do indeed affirmatively recite meaningful limitations. However, Applicants further respectfully submit that the use of conditionals does not affect the patentability of the claims. It is a question of

performing a determination as to whether or not to perform a given action. Applicants wish to note that, as will be apparent, if a given reference fails to teach the action, such reference necessarily fails to teach a determination as to whether or not to perform a given action.

*Rejection of Claims under 35 U.S.C. §112*

Claims 1-9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants have amended independent claims 1, 10, 20, 30 and 40, among others of the claims, in part to address this rejection, and so respectfully submit that this rejection is overcome thereby.

*Rejection of Claims under 35 U.S.C. §102*

Claims 1-18, 20-28, 30-38, 40-48 and 46-48 stand rejected under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Applicant Admitted Prior Art (AAPA).

While not conceding that any of the references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

The Office Action states that what is termed “Applicant Admitted Prior Art (AAPA)”

“... reads on packet processing and classifying a packet. Also, this clearly indicates that there must be some particular packet received from the user could not be controlled (identified and classified to) against a corresponding ACL's entry. For example, note paragraph [004] disclosed by AAPA that teaches ACL using mapping of a user host address. Furthermore, paragraph [002] teaches that access can also be restricted based on the Group(s) to which a user belongs (which is consistent with various access control lists known in the art (e.g., Microsoft Windows)). This parameter used to identify and classify received packets against ACL entries reads on a security group identifier (SGI). Note, that a network device facilitating discussed above functionalities, which essentially equate to packet filtering, must use a processor and utilized at least packet processing (able to receive packets) unit, SGI identification unit and classification unit.” (Office Action, p. 5)

Applicants respectfully disagree with this position, for at least the reason that this position confuses the use of a user group for login, with the claimed security group identifier. The paragraph cited for this position is para. 2 for the present Specification, which reads:

“Flexible network access technologies such as wireless, Dynamic Host Configuration Protocol (DHCP), virtual private network (VPN) gateways and the like allow users access to a given protected network from a variety of access or entry points. This is true of all manner of networks, including enterprise networks, service provider networks and the like. At the same time, the security

afforded while providing such access is of increasing concern. Technologies based on Remote Authentication Dial-In User Service (RADIUS), Terminal Access Controller Access Control System (TACACS), the DIAMETER protocol and other protocols allow a user to be authenticated upon entry to the network. However, the network access that a user is permitted is conventionally based on the group(s) to which the user belongs, the role(s) assigned to the user by the enterprise, the privilege(s) the user has as an ISP customer or similar criteria.” (Specification, para. 2)

As can be seen, what is termed the “AAPA” reflects nothing more than the fact that a user can be a member of a user group. Nowhere in this passage, nor anywhere in the Background of the Invention section, is there taught a security group identifier, nor is there a teaching of the use of such a security group identifier in classifying a packet including such a security group identifier, nor is there even any suggestion that a packet can be made to include such a security group identifier, as is recited in the independent claims. Applicants are at a loss as to how this paragraph could be characterized as teaching such.

Moreover, Applicants note that the rejection of the dependent claims include statements to the effect that certain limitations are “implicit” (i.e., somehow inherent) in the claims. Applicants respectfully submit that such rejections are infirm for at least two reasons. First, even if such were the case, Applicants respectfully submit that such a rejection is inappropriate under 35 U.S.C. § 102(a), as such a rejection requires the combination of AAPA and other features, somehow known in the art (a point which Applicants do not concede).

“In relying on a theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Applicants are not able to find such a demonstration in the Office Action.

With further respect to these limitations being "well known", the applicant respectfully requests that the Examiner provide an affidavit as to the personal knowledge relied on within the meaning of MPEP §2144.03 and 37 C.F.R. §1.107, or designate a reference or particular parts of the cited references and the pertinence of each reference in support of the rejection as required by 37 C.F.R. 1.106(b), which provides: "When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

Applicants respectfully submit that the information that is asserted to be well known is not. Thus, in traversing the Examiner's assertion, the applicants respectfully request that the Examiner cite a reference in support of his position. If it is the Examiner's position that the rejection is based on his personal knowledge, Applicants request that the facts be supported by an affidavit from the Examiner. As no reference is even cited with regard to these statements, and no official notice taken thereof, Applicants respectfully submit that the rejection is overcome in this regard, for at least the foregoing reasons.

For at least the foregoing reasons, then, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of anticipation with regard to amended independent claims 1, 10, 20, 30 and 40, and all claims dependent upon them, and that they are in condition

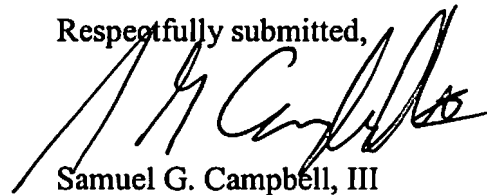
for allowance. Applicants therefore respectfully request the Examiner's reconsideration of the rejections to those claims.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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